United Nations CAT/C/60/D/602/2014

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
7 July 2017

Original: English

Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 602/2014*, **

Communication submitted by:	S.S.B. (represented by counsel, Niels-Erik Hansen)
Alleged victim:	The complainant
State party:	Denmark
Date of complaint:	9 May 2014 (initial submission)
Date of present decision:	28 April 2017
Subject matter:	Deportation; risk of torture
Procedural issues:	Admissibility — manifestly ill-founded
Substantive issues:	Non-refoulement
Articles of the Convention:	3 and 22

1.1 The complainant is S.S.B., a Sudanese national born on 24 June 1974. He sought asylum in Denmark, but his request was rejected. Following a decision of the Danish Refugee Appeals Board dated 23 April 2014, the complainant was invited to leave Denmark voluntarily within 15 days. At the time of submission, he had not left Denmark and was subject to deportation. He claims that his deportation to the Sudan by Denmark would violate his rights under article 3 of the Convention. The complainant is represented by counsel.[1]

1.2 On 16 May 2014, the Committee, acting through its Rapporteur on new complaints and interim measures, asked the State party not to expel the author while the complaint was being considered. On 27 May 2014, the Refugee Appeals Board suspended the time limit for the complainant's departure until further notice in accordance with the Committee's request. On 16 February 2016, following a request by the State party dated 17 November 2014, the Committee, acting through the same Rapporteur, denied the request of the State party to lift interim measures.

* Adopted by the Committee at its sixtieth session (18 April–12 May 2017).

** The following members of the Committee participated in the examination of the present communication: Alessio Bruni, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Sapana Pradhan-Malla, Ana Racu, Sebastien Touzé and Kening Zhang. Pursuant to rule 109 of the Committee's *rules of procedure*, Jens Modvig did not participate in the consideration of the communication.

[1] Denmark made a declaration under article 22 of the Convention on 27 May 1987.

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The facts as presented by the complainant

2.1 The complainant is originally from Darfur. In 2004 he moved to Khartoum and until 2007 he worked in a store. On an unspecified date in 2007, three men from the National Security Force entered the store and subjected the complainant to physical ill-treatment. The complainant's brother was affiliated to an opposition group, the Justice and Equality Movement, and the three men wanted to obtain information from the complainant about his brother's whereabouts. They stabbed him with a knife several times and the complainant was taken to a military hospital. He was informed that he was arrested.

2.2 While in the hospital, on 24 April 2007, the complainant was interrogated by police officers, who threatened to beat him to death if he refused to tell them where his brother was and provide information about his brother's involvement with the Justice and Equality Movement. They also accused him of not being a true Muslim, since he had a Christian girlfriend. One hour after the interrogation, a cleaner in the hospital, who had witnessed the interrogation, advised the complainant to escape as soon as possible, otherwise the police would kill him. Subsequently, the complainant fled the hospital and managed to escape from the Sudan with the assistance of an "agent".

2.3 From 2007 until 2013, the complainant lived as an asylum seeker in Greece. On 25 April 2012, the complainant's partner, whom he had met in the Sudan in 2006 and who is an Eritrean national, and their two children were granted a residence permit in Denmark. The complainant entered Denmark and applied for asylum on 25 August 2013.

2.4 On 29 January 2014, the Danish Immigration Service dismissed the complainant's request for asylum. On an unspecified date, he appealed the decision to the Refugee Appeals Board. On 23 April 2014, the Board upheld the decision of the Danish Immigration Service on the grounds that it found the complainant's statements inconsistent. The Board did not find credible his statements regarding his ill-treatment, subsequent hospitalization and escape from the military hospital. According to the decision, the complainant was supposed to leave Denmark voluntarily within 15 days.

2.5 Since, according to the Danish Aliens Act, the decision of the Board cannot be appealed before the Danish courts, the complainant submits that he has exhausted all available and effective domestic remedies. He further submits that the communication is not being examined under another procedure of international investigation or settlement.

The complaint

3.1 The complainant claims that his deportation to the Sudan would violate his rights under article 3 of the Convention because he would be at personal risk of being persecuted and tortured upon return. He fears that upon return to the Sudan, he could be prosecuted and even killed because of his brother's militant activities and because of the fact that he has a Christian girlfriend.

3.2 The complainant further claims that the decision of the Refugee Appeals Board to refuse him asylum lacked proper investigation and reasoning, contrary to article 3 (2) of the Convention. Moreover, no medical examination was conducted by the Danish authorities in order to confirm or refute the complainant's claims of physical ill-treatment.

State party's observations on admissibility and the merits

4.1 On 17 November 2014, the State party submitted that the complainant had entered Denmark on 25 August 2013 without valid travel documents and applied for asylum on the same day. On 29 January 2014, the Danish Immigration Service refused asylum to the complainant. On 23 April 2014, the Refugee Appeals Board upheld the rejection by the Danish Immigration Service of the complainant's asylum application.

4.2 In its decision of 23 April 2014, the Board stated, inter alia, that the complainant belonged to the el Barti clan, was of the Muslim faith and was born in Mallet, Darfur, Sudan. The complainant had not been a member of any political or religious associations or organizations, but had participated in one single demonstration in Mallet because the Government had attacked his region. It also appears from the decision that the complainant had referred to his fear of being arrested and killed by the intelligence service if returned to

the Sudan because of his brother's attachment to the Justice and Equality Movement. The complainant had also referred to his fear of reprisals or of being killed by both individuals and the authorities because he was in a relationship with a Christian woman, whom he had met in 2006. In support of his grounds for seeking asylum, the complainant had submitted that he had been detained and tortured on 12 April 2007. He had later been admitted to a military hospital because he was unconscious and had escaped from there with the assistance of a hospital employee.

4.3 A majority of members of the Refugee Appeals Board could not find as facts the complainant's statement on his detention, subsequent hospitalization and escape from a military hospital. In its assessment, the Board emphasized that, on essential points, the complainant had made inconsistent and augmentative statements, and that he and his partner had made inconsistent statements concerning the reason for their departure from the Sudan. When interviewed by the Danish Immigration Service, the complainant had stated that he had participated in a demonstration in 2003, but that it had not given rise to problems, and that he had moved to Khartoum in 2005 because he had not wanted to live in the same town as his brother. At the hearing before the Board, the complainant had stated that he had moved to Khartoum in 2003 because the animals he was tending as a shepherd had been killed. Later at the hearing, the complainant had changed his statement, saying that he had started travelling back and forth to Khartoum in 2003, but that he had not moved there until 2005. When interviewed by the Danish Immigration Service on 20 November 2013, the applicant had stated that he had been approached at his workplace by three men, who had beaten and tortured him, stabbing him with a knife all over his body so that he had fainted, after which they had taken him to a military hospital. When interviewed on 17 January 2014, the applicant had stated that three or four persons had looked for him and taken him to the police station, where he had been beaten and whipped across the thighs, and that he had lost consciousness the next day and had therefore been taken to a hospital. The complainant's partner had stated to the Danish Immigration Service on 14 September 2009 that the complainant had been arrested during a visit to his parents. At the hearing before the Refugee Appeals Board, the complainant had stated that his body had been cut with pieces of metal.

4.4 The complainant and his partner had also made inconsistent statements on the reason for the complainant's departure from the Sudan. During her asylum proceedings, the complainant's partner had stated that the complainant had problems with the authorities because he was a conscientious objector, whereas the complainant had stated that it was his brother's attachment to the Justice and Equality Movement that had given rise to his problems with the authorities. Finally, it appears from the decision of the Refugee Appeals Board that the majority of members had emphasized that the applicant's statement on his escape from the military hospital did not seem probable. The Board had also found that the complainant's relationship with a Christian woman could not justify asylum. The Board had emphasized the background information available, from which it appeared that it was permitted for Muslim men and Christian women to marry in the Sudan, that there was no reason to believe that the authorities would react against such marriages, and that it was very unlikely that such relationships would be reported to the police, since they were not illegal. The majority of Board members had found no basis for adjourning the proceedings pending an examination for signs of torture.

4.5 The majority of members had therefore found that the complainant had not been persecuted before his departure and would not, if returned, be at such risk of persecution as to justify residence in Denmark under section 7 of the Aliens Act.

4.6 The State party further provides a detailed description of the legal basis for the work of the Board and its methods of work.[2]

4.7 Concerning the significance of the asylum seeker's credibility relative to the significance of medical information, the State party refers to the Committee's decision in

[2] For a detailed description see, for example, communication No. 580/2012, *F.K. v. Denmark*, decision adopted on 23 November 2015, paras. 4.9-4.11.

the case of *Otman v. Denmark*,[3] in which the complainant's statements on torture and the medical information provided on this were set aside, owing to the complainant's general lack of credibility. In this decision, the Committee referred to paragraph 8 of its general comment No. 1 (1997) on the implementation of article 3, pursuant to which questions about the credibility of a complainant, and the presence of relevant factual inconsistencies in his claim, are pertinent to the Committee's deliberations as to whether the complainant would be in danger of being tortured upon return. The State party also referred to the Committee's decision in the case of *Alp v. Denmark*,[4] in which it found that the State party's authorities had thoroughly evaluated all the evidence presented by the complainant, had found the complainant to lack credibility, and had not considered it necessary to order a medical examination.

4.8 The State party refers to the Views of the Committee in the case of *X, Y and Z v. Sweden*,[5] and to the Committee's decision in the case of *M.C.M.V.F. v. Sweden*,[6] and maintains that the crucial point is the situation in the country of origin at the time of the potential return of the alien to that country.

4.9 The State party submits that the complainant has failed to establish a prima facie case for the purpose of admissibility of his complaint under article 3 of the Convention, and refers to rule 113 of the Committee's rules of procedure. It has not been established that there are substantial grounds for believing that the complainant is in danger of being subjected to torture if returned to the Sudan. The complaint is therefore manifestly ill-founded and should be declared inadmissible. Should the Committee find the complaint admissible, the State party submits that the complainant has not sufficiently established that it would constitute a violation of article 3 to return him to the Sudan.

4.10 As can be seen from the decision made by the Refugee Appeals Board, the Board did not consider as a fact the complainant's statement concerning his grounds for seeking asylum, since the majority of members of the Board emphasized that, on essential points, the applicant had made inconsistent and augmentative statements, and that he and his partner had made inconsistent statements concerning the reason for their departure from the Sudan (see paras. 4.3 and 4.4 above). The Board thus found that the complainant had failed to substantiate his claim that he had been subjected to torture.

4.11 As regards the complainant's observations that the Danish immigration authorities decided the complainant's application for asylum without initiating an examination for signs of torture even though the complainant had consented to undergoing such examination, the State party observes that the Refugee Appeals Board normally does not order an examination for signs of torture where the asylum seeker has appeared non-credible throughout the proceedings, and the Board therefore has to reject the asylum seeker's statement about torture in its entirety. The State party submits that the case considered by the Committee in the case of *K.H. v. Denmark*[7] differs considerably from the complainant's case in that it concerned an Afghan national whose grounds for seeking asylum were related to the Taliban, and that the Board "could find the complainant's statement regarding his conflicts with the Taliban as a fact".

4.12 The Refugee Appeals Board also found that the complainant's relationship with a Christian woman did not justify asylum (see para. 4.4 above). In this respect, the State party refers to the *International Religious Freedom Report for 2012 — Sudan*[8] published by the Department of State of the United States of America on 30 July 2012, which was also included in the background material of the Board in the assessment of the complainant's case. Upon an overall assessment of the information provided by the complainant for the case, in conjunction with the other particulars provided, including the information provided

[3] See communication No. 209/2002, *Otman v. Denmark*, decision adopted on 12 November 2003, paras. 6.4-6.6.

[4] See communication No. 466/2011, *Alp v. Denmark*, decision adopted on 14 May 2014.

[5] See communication No. 61/1996, *X, Y and Z v. Sweden*, Views adopted on 6 May 1998, para. 11.2.

[6] See communication No. 237/2003, *M.C.M.V.F. v. Sweden*, decision adopted on 12 December 2005, para. 6.4.

[7] See communication No. 464/2011, *K.H. v. Denmark*, decision adopted on 23 November 2012.

[8] See http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?yr=2012&dlid=208200.

by the complainant's partner and the background information available on the situation in the complainant's home region, the majority of Board members could not accept as facts the complainant's statements about conflicts with authorities or others in the Sudan prior to his departure. The State party moreover maintains that neither the fact that the decision made by the Board was a majority decision nor the fact that the complainant comes from a country where gross violations of human rights occur can lead to a different assessment of the case.

4.13 The State party submits that no new information has been provided in the complainant's complaint to the Committee about his ill-treatment in his country of origin, as compared with the information available when the Board decided the appeal and which therefore formed part of the basis of its decision. Nor has any other information been provided that may result in a different assessment of the credibility of the complainant's information on his grounds for seeking asylum. The State party also refers to the findings made by the European Court of Human Rights in several cases concerning the assessment of credibility in asylum cases, including its judgment in the case of *R.C. v. Sweden*: "The Court observes, from the outset, that there is a dispute between the parties as to the facts of this case and that the Government have questioned the applicant's credibility and pointed to certain inconsistencies in his story. The Court acknowledges that it is often difficult to establish, precisely, the pertinent facts in cases such as the present one. It accepts that, as a general principle, the national authorities are best placed to assess not just the facts but, more particularly, the credibility of witnesses since it is they who have had an opportunity to see, hear and assess the demeanour of the individual concerned."[9]

4.14 The State party further submits that it also follows from the case law of the Committee that due weight must be accorded to findings of fact made by government authorities.[10] The Refugee Appeals Board made its decision on the basis of a procedure during which the complainant had the opportunity to present his views, both in writing and orally, with the assistance of legal counsel. The decision made by the Board was thus based on a comprehensive and thorough examination of all the evidence in the case. When assessing the complainant's credibility, the Board made an overall assessment, which included the complainant's statements and demeanour at the Board hearing in conjunction with the other information available in the case. In accordance with the case law of the Committee, the Board emphasized in that connection whether the statements were coherent, likely and consistent. In his complaint to the Committee, the complainant failed to provide any new, specific details about his situation and he is thus, in fact, trying to use the Committee as an appellate body and have the factual circumstances relied upon in support of his claim for asylum reassessed by the Committee. The State party maintains that the Committee must give considerable weight to the findings of fact of the Board, which is better placed to assess the factual circumstances in the complainant's case.

Complainant's comments on the State party's observations

5.1 In submissions dated 21 January 2016 and 2 February 2016, the complainant submits that the Danish Immigration Service and the Refugee Appeals Board did not appear to understand the need to carry out medical examinations in torture cases. When he arrived in Denmark, he and his partner were unable to obtain family reunification under the existing rules. As a victim of torture in his country of origin, he filed an application for protection in Denmark against deportation to the Sudan.

5.2 The complainant submits that, in all communications concerning deportations, it is argued by the State party that the complainants have failed to establish a prima facie case as a reason to declare their communications ill-founded, but very little reasoning is provided indicating why the communications are ill-founded. He further notes that he agrees with the State party that he is trying to use the Committee as an appellate body, since he is "desperately in need of the assistance" of the Committee. The domestic law does not allow

[9] See European Court of Human Rights, *R.C. v. Sweden* (application No. 41827/07), judgment of 9 March 2010, para. 52. Reference is also made to European Court of Human Rights, *M.E. v. Sweden* (application No. 71398/12), judgment of 26 June 2014, para. 78.

[10] See, inter alia, *Otman v. Denmark*, para. 6.5.

an appeal against the decisions of the Refugee Appeals Board even in cases such as his, where the Board was split when deciding the case. A minority of Board members wanted the complainant to be granted asylum or to allow for a medical examination before making the final decision. This was, however, overruled by the majority of members, which issued a negative decision. The complainant maintains that, as a matter of fair trial, it should be allowed that such a decision can be examined at a higher level, but this is not allowed in the State party. Consequently, he agrees with the State party that the Committee is in fact being used as an appellate body, but he contests the assertion that the Committee should give any weight to the findings made by a majority of members of the Board, since these were made without the "proper basis" — in his case, a medical torture examination.

5.3 The complainant maintains that the Committee should consider his communication admissible, and rejects the argument that he failed to establish a prima facie case.

5.4 The complainant refers to the Committee's decision in the case of *Amini v. Denmark*[11] and in the case of *K.H. v. Denmark* (para. 4.5), and notes that, in both cases, the Refugee Appeals Board considered that the complainants had lied about the torture they had suffered, no medical examination was allowed, but both complainants were able to undergo a torture examination free of charge, conducted by the doctors at the Amnesty International Danish Medical Group. Since asylum seekers in Denmark are not allowed to work, they have no income that would allow them to pay for such a medical examination themselves. Consequently, many asylum seekers who were not allowed a medical torture examination by the Danish authorities apply for the free examination by Amnesty International. The organization can only process a limited number of cases and, so far, the complainant's case has not been among them, even though he has applied. He maintains that it is the State party to the Convention which should be responsible for allowing such medical torture examinations, and not the complainant, who has no financial means, or non-governmental organizations with limited resources and reliant on volunteers.

5.5 The complainant refers to the case of a Turkish national of Kurdish origin who was claiming asylum due to the torture he suffered before fleeing, and where the Refugee Appeals Board ordered a medical torture examination and subsequently granted him asylum based on the results. The decision of the Board was postponed until the Board had the results of this medical examination.[12] The complainant maintains that this was the "correct procedure" that should also have been followed in his case, because it was of paramount importance to establish whether the complainant had been tortured before fleeing, in order to allow for an assessment of whether he would be subjected to torture (again) on his return. In support, the complainant referred to the Committee's jurisprudence in the cases of *Arana v. France*,[13] *Agiza v. Sweden*[14] and *Chun Rong v. Australia*.[15] He also referred to the Committee's decision in the case of *K.H. v. Denmark* (para. 8.8), where the Committee had explicitly held that, by rejecting the complainant's asylum request without seeking further investigation on his claims or ordering a medical examination, the State party had failed to determine whether there were substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned, and had found a violation of article 3.

5.6 The complainant further refers to two decisions by the European Court of Human Rights, *A.A. v. France* and *A.F. v. France*,[16] in which the applicants were asylum seekers from the Sudan. In both cases, the Court had found France in violation of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which is based, inter alia, on a very precise examination of background information about the human rights situation in the Sudan. In the second decision, the Court had stated that it was likely that

[11] See communication No. 339/2008, *Amini v. Denmark*, decision adopted on 15 November 2010, paras. 9.8 and 9.9.

[12] Case file No. 1-30-449 774, no copy provided by the complainant.

[13] See communication No. 63/1997, *Arana v. France*, Views adopted on 9 November 1999.

[14] See communication No. 233/2003, *Agiza v Sweden*, decision adopted on 20 May 2005, para. 13.7.

[15] See communication No. 416/2010, *Chun Rong v. Australia*, decision adopted on 5 November 2012.

[16] See European Court of Human Rights, *A.A. v. France*, (application No. 18039/11), judgment of 15 April 2015; *A.F. v. France* (application No. 80086/13), judgment of 15 April 2015.

[16] See European Court of Human Rights, *A.A. v. France*, (application No. 18039/11), judgment of 15 April 2015; *A.F. v. France* (application No. 80086/13), judgment of 15 April 2015.

A.F., on his arrival at Khartoum Airport, would attract the unfavourable attention of the authorities on account of the few years he had spent abroad.[17] The complainant maintains that he has also spent a long time abroad and would attract attention if he returned, which would immediately reveal his scars resulting from the torture he had suffered. The above would allow the Sudanese police and security service to understand that he was one of their former "clients". Consequently, he would be subjected to interrogation and most likely tortured. The complainant submits a photograph of his scars in support.

5.7 The complainant maintains that the Committee's general comment No. 1 clearly indicates that the State party, aware of gross human rights violations in the country of origin, must establish whether the asylum seeker suffered torture before fleeing. This is a crucial element in the assessment of whether the complainant would also face torture on return. The State party seems to have taken the (incorrect) position that it was not obliged to establish whether the complainant was in fact tortured before fleeing, in order to assess the future risk of torture upon return. Consequently, the complainant argues that, with regard to the merits of the case, the majority of members of the Refugee Appeals Board who had rejected the possibility of a medical examination before rejecting the complainant's claim for asylum had violated the "procedural aspects" of article 3.

State party's additional observations

6.1 In a submission dated 10 June 2016, the State party submits in response to the complainant's comments of 21 January 2016 that it maintains its observations of 17 November 2014. It further submits that, as appears from the decision made by the Refugee Appeals Board, the majority of its members "could not find as facts the complainant's statement" that he was detained in April 2007 and tortured by persons having ties with the Sudanese authorities because of his brother's involvement with the Justice and Equality Movement. In this respect, the majority of Board members emphasized the fact that the complainant had made augmentative and inconsistent statements relating to essential elements of his grounds for asylum, and that he and his partner had made inconsistent statements about the reason for their departure from the Sudan (see paras. 4.3 and 4.4 above).

6.2 The State party submits that the case file concerning the complainant's partner, whom the complainant met in 2006 in the Sudan and with whom he cohabited at the time of their departure from the Sudan in 2007, was taken into account in the examination of the complainant's application for asylum and was accordingly included in the basis of the decisions made in the case by the Danish Immigration Service and the Refugee Appeals Board. The State party confirms the complainant's submission with regard to his partner's asylum proceedings and the fact that, on 25 April 2012, the Refugee Appeals Board had granted residence to her under section 7 (2) of the Aliens Act, taking into account her illegal departure from Eritrea, her long-term stay abroad and her evasion of military service. It further appeared from the case file relating to the application for asylum lodged by the complainant's partner that she had stated, when interviewed by the Danish Immigration Service on 14 December 2009, that the complainant had not completed his compulsory military service and had therefore been arrested at his parent's home, that he had escaped after 14 days in prison and that the couple had then left the Sudan. However, from the case file relating to the complainant's application for asylum, it appeared that he had stated at the asylum interview on 17 January 2014 that he had told his partner that he had been arrested because of his brother's involvement with the Justice and Equality Movement and that he believed that his partner had not told the Danish Immigration Service so because it was not her problem. The complainant also stated that his partner might need a psychologist and did not speak very clearly. At the hearing before the Board on 23 April 2014, the complainant was asked to explain the fact that his partner had said during her asylum proceedings that the complainant had had to leave his country of origin because of his military service. The complainant responded that his partner was not proficient in Arabic and that he had not wanted her to know the full truth. The State party has considered

[17] See press release issued by the Registrar of the Court, Deportation of two Sudanese nationals living in France to their country of origin would entail a violation of the Convention, 15 January 2015.

whether the above discrepancies between the complainant's and his partner's accounts of the incident that made them leave the Sudan in 2007 and the augmentative and inconsistent statements in the complainant's account may be attributable to torture, as claimed by the complainant himself, but has found that this is not the case.

6.3 As regards the photo of scars on the complainant's body, the State party observes that the fact that the complainant has scars on his body cannot be taken to mean that the complainant has been subjected to the physical abuse claimed by him. In cases in which the asylum seeker has claimed to have been subjected to torture as a result of circumstances that still apply, and in which there is therefore a risk that the asylum seeker will be subjected to torture again in case of return to the country of origin, the Refugee Appeals Board will normally not make arrangements for an examination for signs of torture if the relevant asylum seeker has appeared non-credible throughout the proceedings, as in the case at hand. The Board therefore fully rejects the asylum seeker's statement on the alleged torture or the circumstances that gave rise to the torture. If the statement explaining why the asylum seeker was subjected to torture is rejected as being non-credible and the circumstances giving rise to the risk of torture in case of his return continue to prevail according to the asylum seeker, it also, naturally, cannot be considered a fact that, on that basis, the asylum seeker risks being subjected to torture in the case of return to the country of origin. The State party refers to the Committee's decision in the case of *S.A.P. v. Switzerland*,[18] in which the complainant produced medical certificates in support of his application for asylum and the Committee stated: "S.A.P. claims that, as a result, she sustained extremely serious injuries and suffered from post-traumatic stress disorder. However, the Committee considers that the complainants have not provided sufficient evidence to allow it to conclude that the attested injuries were caused by the alleged acts of persecution and ill-treatment by those authorities."

6.4 The State party submits that it is aware of the Committee's recent decision in the case of *F.K. v. Denmark*,[19] which reads: "[…] the Committee considers that, while the State party has raised serious credibility concerns, it drew an adverse credibility conclusion without adequately exploring a fundamental aspect of the complainant's claim. The Committee therefore considers that, by rejecting the complainant's asylum application without ordering a medical examination, the State party failed to sufficiently investigate whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to Turkey". In the opinion of the State party, it cannot be inferred from *F.K. v. Denmark* that there is a general obligation to perform an examination for signs of torture in cases where an asylum seeker's statement on the grounds for asylum cannot be considered a fact because the statement is deemed to lack credibility. Accordingly, the reasoning given in *F.K. v. Denmark* is very specific.

6.5 The State party submits that, no matter whether it may be considered a fact that a consistent pattern of gross, flagrant or mass violations of human rights exists in the Sudan, it finds that the complainant would not be at specific and individual risk of abuse falling within article 3 on his return. It referred to the Committee's decisions in the cases of *Z. v. Denmark*[20] and *M.S. v. Denmark*,[21] in which the Committee states that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not, as such, constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. The State party further maintains that the complainant's reference to the judgments by the European Court of Human Rights in *A.A. v. France* and *A.F. v. France* (see para. 5.6 above) cannot lead to a different assessment of his case.

[18] See communication No. 565/2013, *S.A.P. v. Switzerland*, decision adopted on 25 November 2015, para. 7.4.

[19] See communication No. 580/2014, *F.K. v. Denmark*, decision adopted on 23 November 2015, para. 7.6.

[20] See communication No. 555/2013, *Z. v. Denmark*, decision adopted on 10 August 2015.

[21] See communication No. 571/2013, *M.S. v. Denmark*, decision adopted on 23 November 2015.

6.6 The State party submits that, according to the information provided by the complainant, the complainant has not been a member of any political associations or organizations, nor was he contacted by the authorities prior to the incident claimed by the complainant to have occurred in 2007, which incident the majority of the members of the Refugee Appeals Board could not accept as a fact. Residence under section 7 of the Aliens Act cannot be justified by the circumstances that the complainant is an ethnic African and initially originated from Darfur. It has not been rendered probable that the complainant would attract the attention of the Sudanese authorities merely as a consequence of his long-term stay abroad. Accordingly, the State party finds that the complainant appears as a very low-profile individual for the Sudanese authorities and that he would not risk abuse on his entry into the Sudan. As regards the complainant's references to a number of other communications, the State party submits that those communications concerned asylum seekers from other countries and that no parallels between the circumstances of the complainant's case and the circumstances of those cases have been identified. It therefore finds that those references cannot lead to a different assessment of the complainant's case.

6.7 The State party refers to the Views adopted by the Human Rights Committee in the cases of *P.T. v. Denmark*,[22] *K v. Denmark*[23] and *N v. Denmark*.[24] It maintains that the complainant's communication merely reflects that he disagrees with the assessment of his specific circumstances and the background information made by the Refugee Appeals Board in his case. The complainant also failed to identify any irregularity in the decision-making process or any risk factors that the Board had failed to take properly into account. Therefore, the State party reiterates that the complainant is in fact trying to use the Committee as an appellate body to have the factual circumstances which he advocated in support of his claim for asylum reassessed by the Committee. Furthermore, it reiterates that the Committee must give considerable weight to the findings of fact made by the Board, which is better placed to assess the factual circumstances of the complainant's case.[25]

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party does not contest that the complainant has exhausted all available domestic remedies.

7.3 The Committee recalls that, for a claim to be admissible under article 22 of the Convention and rule 113 (b) of its rules of procedure, it must rise to the basic level of substantiation required for purposes of admissibility.[26] The Committee notes the State party's argument that the communication is manifestly ill-founded owing to a lack of substantiation. The Committee considers, however, that the arguments put forward by the complainant raise substantive issues under article 3 of the Convention, and that those

[22] See Human Rights Committee communication No. 2272/2013, *P.T. v. Denmark*, Views adopted on 1 April 2015, para. 7.3.

[23] See Human Rights Committee communication No. 2393/2014, *K v. Denmark*, Views adopted on 16 July 2015, paras. 7.4 and 7.5.

[24] See Human Rights Committee communication No. 2426/2014, *N v. Denmark*, Views adopted on 23 July 2015, para. 6.6.

[25] The State party provides statistics on the case law of the Danish immigration authorities, which show, inter alia, the recognition rates for asylum claims from the 10 largest national groups of asylum seekers decided by the Refugee Appeals Board between 2013 and 2015.

[26] See, inter alia, communication No. 308/2006, *K.A. et al. v. Sweden*, decision adopted on 16 November 2007, para. 7.2.

arguments should be dealt with on the merits. Accordingly, the Committee finds no obstacles to the admissibility and declares the communication admissible.

Consideration of the merits

8.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22 (4) of the Convention.

8.2 The issue before the Committee is whether the return of the complainant to the Sudan would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return ("refouler") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to the Sudan. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The Committee remains seriously concerned about the continued and consistent allegations of widespread use of torture and other cruel, inhuman or degrading treatment perpetrated by State actors, both the military and the police, which have continued in many parts of the Sudan.[27] However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would return; additional grounds must be adduced to show that the individual concerned would be personally at risk.[28]

8.4 The Committee recalls its general comment No. 1, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. The risk does not have to meet the test of being highly probable, but it must be personal and present. In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal. The Committee recalls that, under the terms of general comment No. 1, it gives considerable weight to findings of fact that are made by authorities of the State party concerned, while at the same time it is not bound by such findings and instead has the power, provided by article 22 (4) of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

8.5 The Committee notes the complainant's claims that he would be at real personal risk of torture if returned to the Sudan because: he was interrogated regarding his brother's involvement with the Justice and Equality Movement and the brother's whereabouts by national security officers and police officers; he was stabbed with a knife several times by security officers; he was threatened with death by police officers; and he fled a military hospital where he had been detained and subsequently the country. He also fears returning to the Sudan because of his relationship with a Christian woman, since police officers had accused him of not being a true Muslim on account of that relationship. The Committee also notes the State party's observations that its domestic authorities found that the complainant lacked credibility because, inter alia, he had made conflicting and augmentative statements during interviews, and that he and his partner had made inconsistent statements concerning the reason for their departure from the Sudan (see paras. 4.3 and 4.4 above).

8.6 In the present case, the Committee observes that the complainant's allegations that he would risk being tortured if returned to the Sudan rely on the general human rights record of the Sudan and on the claim that, in 2007, he had been stabbed with a knife, threatened and arrested by security and police officers to make him reveal the whereabouts of his brother, a supporter of the Justice and Equality Movement. The Committee also notes the State party's submissions that the complainant has never been involved with the

[27] CCPR/C/SDN/CO/4, paras. 15-17.

[28] See communications No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006, No. 333/2007, *T.I. v. Canada*, decision adopted on 15 November 2010, and No. 344/2008, *A.M.A. v. Switzerland*, decision adopted on 12 November 2010.

Movement himself, that his political activity was limited to participating in one demonstration and that he provided contradictory statements regarding the events surrounding his ill-treatment and arrest. The Committee notes that, even if it were to discount the above-mentioned inconsistencies and accept these claims as true, the complainant has not provided any evidence that the authorities in the Sudan have been looking for him in the recent past or were otherwise interested in him. The Committee further takes note of the complainant's position that the authorities should have ordered a medical examination, to prove or disprove whether he had been subjected to torture in the past.

8.7 The Committee observes that a medical examination requested by a complainant to prove the acts of torture that he or she has allegedly suffered should, in principle, be conducted, regardless of the authorities' assessment of the credibility of the allegation, so that the authorities deciding on a given case of forcible return are able to complete the assessment of the risk of torture objectively, on the basis of the results of that medical examination, without any reasonable doubt. In the particular circumstances of the present case, however, the Committee takes note of the period of time elapsed since the events in 2007, and recalls that, although past events may be of relevance, the principal aim of its assessment is to determine whether the complainant currently runs the risk of being subjected to torture upon his return to the Sudan.[29] The Committee recalls that ill-treatment suffered in the past is only one element to be taken into account, the relevant question before the Committee being whether the complainant currently runs a risk of torture if returned to the Sudan.[30] The Committee considers that, even if it were assumed that the complainant was tortured by the Sudanese authorities in the past, it does not automatically follow that, at least 10 years after the alleged events occurred, he would still be at risk of being subjected to torture if returned to the Sudan.[31]

8.8 The Committee recalls its jurisprudence whereby the risk of torture must be assessed on grounds that go beyond mere theory, and indicates that it is generally for the complainant to present an arguable case.[32] In the light of the considerations above, and on the basis of all the information submitted by the complainant and the State party, including on the general situation of human rights in the Sudan, the Committee considers that the complainant has not adequately demonstrated the existence of substantial grounds for believing that his return to the Sudan would expose him to a real, specific and personal risk of torture, as required under article 3 of the Convention.

9. Accordingly, the Committee, acting under article 22 (7) of the Convention, is of the view that the return of the complainant to the Sudan would not constitute a breach of article 3 of the Convention.

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[29] See communications No. 61/1996, *X, Y and Z v. Sweden*, Views adopted on 6 May 1998, para. 11.2 and No. 435/2010, *G.B.M. v. Sweden*, decision adopted on 14 November 2012, para. 7.7.

[30] See, for example, communications No. 61/1996, *X, Y and Z v. Sweden*, Views adopted on 6 May 1998, para. 11.2; No. 435/2010, *G.B.M. v. Sweden*, decision adopted on 14 November 2012, para. 7.7; No. 458/2011, *X. v. Denmark*, decision adopted on 28 November 2014, para. 9.5.

[31] See, for example, communication No. 431/2010, *Y. v. Switzerland*, decision adopted on 21 May 2013, para. 7.7 and No. 458/2011, *X. v. Denmark*, decision adopted on 28 November 2014, para. 9.5.

[32] See communications No. 298/2006, *C.A.R.M. et al. v. Canada*, decision adopted on 18 May 2007, para. 8.10; No. 256/2004, *M.Z. v. Sweden*, decision adopted on 12 May 2006, para. 9.3; No. 214/2002, *M.A.K. v. Germany*, decision adopted on 12 May 2004, para. 13.5; No. 150/1999, *S.L. v. Sweden*, Views adopted on 11 May 2001, para. 6.3; and No. 347/2008, *N.B.-M. v. Switzerland*, decision adopted on 14 November 2011, para. 9.9.